IN THE

# Supreme Court of the United States

October Term, 1977

No. 5, Original

Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

UNITED STATES OF AMERICA, *Plaintiff,*

*v.*

STATE OF CALIFORNIA, *Defendant.*

## PETITION FOR THE ENTRY OF A FOURTH SUPPLEMENTAL DECREE, REQUEST FOR APPOINTMENT OF A SPECIAL MASTER, PROPOSED FOURTH SUPPLEMENTAL DECREE, AND MEMORANDUM RELATIVE TO PROPOSED FOURTH SUPPLEMENTAL DECREE

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IN THE

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October Term, 1977

No. 5, Original

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UNITED STATES OF AMERICA, *Plaintiff,*

*v.*

STATE OF CALIFORNIA, *Defendant.*

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## PETITION FOR THE ENTRY OF A FOURTH SUPPLEMENTAL DECREE AND REQUEST FOR APPOINTMENT OF A SPECIAL MASTER

The State of California respectfully petitions this Court to enter in this cause a supplemental decree in the form submitted herewith. California further requests that a Special Master be appointed to hold hearings and to prepare a report and recommendations with respect to the factual and legal issues involved.

EVELLE J. YOUNGER,
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Deputy Attorney General,

By _____

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*Attorneys for Petitioner.*

**DATED: December 19, 1977.**

IN THE

# Supreme Court of the United States

October Term, 1977

No. 5, Original

UNITED STATES OF AMERICA, *Plaintiff,*

*v.*

STATE OF CALIFORNIA, *Defendant.*

**PROPOSED FOURTH SUPPLEMENTAL DECREE**

For the purpose of identifying with greater particularity parts of the boundary line, as defined by the Supplemental Decree of January 31, 1966, 382 U.S. 448, between the submerged lands of the United States and the submerged lands of the State of California, it is ORDERED, ADJUDGED AND DECREED that this Court's Supplemental Decrees of January 31, 1966, and June 13, 1977, be, and the same are hereby, further supplemented as follows:

1. The inland waters of the Port of San Pedro include those waters enclosed by a straight line from the eastern end of the Long Beach breakwater (NOS Chart 18749, 33° 43′ 23″ N, 118° 08′ 10″ W) to the seaward end of the east jetty of Anaheim Bay (NOS Chart 18749, 33° 43′ 36″ N, 118° 05′ 57″ W).



2. The inland waters of San Diego Bay are those enclosed by a straight line from the seaward end of Point Loma (NOS Chart 18772, 32° 39′ 46″ N, 117° 14′ 29″ W) to the point at which the line of mean lower low water intersects with the southern seaward end of the entire Zuniga jetty (NOS Chart 18772, 32° 40′ 00.5″ N, 117° 13′ 40″ W).

3. The mean lower low water line along each of the following structures is part of the coastline of California for purposes of establishing the Federal-State boundary line under the Submerged Lands Act:

a. The Sharp Beach pier (NOS Chart 18685, 37° 38′ 00″ N, 122° 29′ 41″ W);

b. The Morro Strand pier (NOS Chart 18703, 35° 24′ 38.4″ N, 120° 52′ 31.9″ W);

c. The Port Orford pier (NOS Chart 18721, 34° 28′ 09.6″ N, 120° 13′ 38.8″ W);

d. The Ellwood pier (NOS Chart 18721, 34° 25′ 39″ N, 119° 55′ 20″ W);

e. The Santa Barbara Biltmore Hotel pier (NOS Chart 18725, 34° 24′ 59.4″ N, 119° 38′ 30″ W);

f. The Carpinteria pier (NOS Chart 18725, 34° 23′ 06″ N, 119° 30′ 4.6″ W);

g. The Punta Gorda causeway and Rincon Island (NOS Chart 18725, 34° 20′ 48.1″ N, 119° 26′ 39″ W);

h. The Venice pier (NOS Chart 18744, 33° 59′ 06″ N, 118° 28′ 35″ W);

i. The El Segundo pier (NOS Chart 18744, 33° 54′ 36″ N, 118° 25′ 54″ W);

j. The Manhattan Beach pier (NOS Chart 18744, 33° 53′ 00″ N, 118° 24′ 48.2″ W);

k. The Hermosa Beach pier (NOS Chart 18744, 33° 51′ 40.2″ N, 118° 24′ 16.9″ W);

l. The Huntington Beach pier (NOS Chart 18740, 33° 09′ 14″ N, 118° 00′ 21″ W);

m. The Newport Beach pier (C&GS Chart 5108, 33° 36′ 22.0″ N, 117° 55′ 49.6″ W);

n. The Balboa Beach pier (C&GS Chart 5108, 33° 35′ 54.4″ N, 117° 54′ 01.1″ W);

o. The Oceanside pier (NOS Chart 18740, 33° 11′ 29.4″ N, 117° 23′ 18″ W);

p. The Ocean Beach pier (C&GS Chart 5108, 32° 44′ 58.5″ N, 117° 15′ 30.5″ W); and

q. The Imperial Beach pier (NOS Chart 18772, 32° 34′ 46.6″ N, 117° 08′ 08.0″ W).

4. Each of the closing lines, piers, and artificial structures delineated in the foregoing paragraphs is part of the coastline of California. The foregoing is without prejudice to the right of either party to assert or deny that other closing lines, piers or artificial structures are part of the coastline of California for purposes of establishing the Federal-State boundary line under the Submerged Lands Act.

5. The Court retains jurisdiction to entertain further proceedings, enter such orders, and issue such writs as may from time to time be deemed necessary or advisable to give proper force and effect to this decree or to effectuate the rights of the parties in the premises.



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UNITED STATES OF AMERICA. *Plaintiff.*

*v.*

STATE OF CALIFORNIA. *Defendant.*

## MEMORANDUM RELATIVE TO PROPOSED FOURTH SUPPLEMENTAL DECREE

In 1945, the United States initiated this action against the State of California by the filing of a complaint in the original jurisdiction conferred by Article III, Section 2, Clause 2 of the United States Constitution. In the supplemental decrees of January 31, 1966, and June 13, 1977, this Court has retained jurisdiction to entertain such further proceedings, to enter such orders and to issue such writs as were deemed necessary or advisable to give

proper force and effect to these decrees or to effectuate the rights of the parties in the premises.* *United States v. California,* 382 U.S. 448, 453 (1966) (paragraph 14); *United States v. California,* U.S. , , 53 L.Ed.2d 94, 95, 97 S.Ct. 2915, 2916 (1977) (paragraph 3). Referring to the boundary line between the submerged lands of the United States and the submerged lands of the State of California, paragraph 13 of the 1966 decree provided:

> "... As to any portion of such boundary line or of any areas claimed to have been reserved under § 5 of the Submerged Lands Act as to which the parties may have been unable to agree, either party may apply to the Court at any time for the entry of a further supplemental decree."

In urging the entry of the proposed fourth supplemental decree submitted with this petition, the State of California invokes the jurisdiction reserved by this Court in the 1966 and 1977 supplemental decrees with particular reference to the language quoted immediately above. The parties have been unable to agree as to the location of those portions of the boundary line affected by the closing lines of inland waters, the piers and the one other artificial

*The parties are currently seeking the entry of a third supplemental decree delineating their respective rights within one nautical mile of the shorelines of Anacapa and Santa Barbara Islands off the California coast. The parties have stipulated that there are no factual issues which require the appointment of a Special Master and have already filed a Joint Appendix and opposing briefs. At this time, the parties are awaiting an order directing the matter to be calendared for oral argument.

The present petition for entry of a fourth supplemental decree raises issues which are entirely separate from those raised in the pending cross-petitions for a third supplemental decree. Unlike the pending cross-petitions, this petition presents factual issues which require appointment of a Special Master.



structure listed in the proposed supplemental decree. California contends that these closing lines, piers and the other artificial structure are part of California's coastline for purposes of identifying additional parts of the boundary line between the submerged lands of the United States and the submerged lands of the State of California. The United States refuses to recognize that these closing lines and features constitute any part of California's coastline for this purpose.

### A. The Port of San Pedro Closing Line

The first supplemental decree entered by this Court in 1966 did not completely identify the limits of the inland waters at the eastern end of the Port of San Pedro. Paragraph 7 of the 1966 supplemental decree stated:

> "7. The inland waters of the Port of San Pedro are those enclosed by the breakwater and by straight lines across openings in the breakwater; *but the limits of the port, east of the eastern end of the breakwater, are not determined by this decree." United States v. California,* 382 U.S. 448, 451 (1966). (Emphasis added.)

In seeking a fourth supplemental decree, California seeks a determination of the limit of the inland waters of the Port of San Pedro east of the eastern end of the breakwater. California proposes that a closing line be drawn from the eastern end of the Long Beach breakwater to the seaward end of the east jetty of Anaheim Bay. (*See* Figs. 1 & 2.) The United States takes the position that the closing line should be drawn from the eastern end of the Long Beach breakwater to the Alamitos Bay jetty also shown on Figures 1 and 2. A total of 63 acres of submerged land is involved in dispute at this location, and this acreage is situated in an area of proven oil reserves.

### B. The San Diego Bay Closing Line

In the second supplemental decree entered by this Court on June 13, 1977, this Court adjudged that the Zuñiga jetty at the entrance to San Diego Bay was part of the coastline of California for purposes of establishing the federal-state boundary line under the Submerged Lands Act, 67 Stat. 29, 43 U.S.C. §§ 1301-1315. *United States v. California,* U.S. , 53 L.Ed.2d 94, 95, 97 S.Ct. 2915, 2916 (1977) (paragraph 2). But neither the 1977 supplemental decree nor any previous decree of this Court has adjudicated the closing line of San Diego Bay. California contends that the closing line of San Diego Bay should be a straight line connecting its two natural entrance points: Point Loma and the seaward end of Zuñiga jetty. (*See* Fig. 3.) The United States contends that the closing line should be drawn from Point Loma to a point on the Zuñiga jetty where the closing line would have no effect on the federal-state boundary. Twelve (12) acres are in dispute at this location, and it is not known whether the acreage involved has oil potential.

### C. The Piers and the Punta Gorda Causeway and Island

In addition to seeking a judicial decree establishing the proper closing lines for the Port of San Pedro and San Diego Bay, this petition also seeks an adjudication that sixteen (16) piers along the California coast (Figs. 4-8, 10-19) and the Punta Gorda causeway and island (Fig. 9) are part of the California coastline for purposes of identifying the federal-state boundary immediately in front of each of these structures. With respect to all of these structures, there are approximately 2,854 acres in dispute. Most of this acreage is situated over known pools of oil presently under development.



Under this Court's definition of "coast line" set forth in paragraph 2 of the 1966 supplemental decree, the piers and the Punta Gorda causeway and island constitute modifications of the coastline by "artificial means" and may also qualify as "harbor works." *United States v. California,* 382 U.S. 448, 449 (1966). Furthermore, in *United States v. Louisiana,* 394 U.S. 11, 37 n. 42 (1969), this Court specifically noted that the *travaux preparatoires* of the Convention on the Territorial Sea and the Contiguous Zone, T.I.A.S. No. 5639, reflected an understanding that piers as well as jetties were to be treated as part of the baseline for delimiting the breadth of the territorial sea. Since the Convention has been adopted for purposes of interpreting the Submerged Lands Act (*United States v. California,* 381 U.S. 139, 165 (1965); *United States v. Louisiana, supra,* 394 U.S. at 21), the International Law Commission's treatment of piers as part of the baseline of the territorial sea should be persuasive toward a finding that piers are and should be treated as part of the coastline under the Submerged Lands Act of 1953. California also contends that the Punta Gorda causeway and island should be treated as an artificial modification of the coastline or as a "harbor work" in the same manner as jetties and piers.

Present federal opposition to the treatment of California's piers as part of its coastline conflicts with a published Department of State position recognizing piers as part of the coastline. A 1965 Department of State publication contained a diagram which clearly identified a pier on the open coast and treated that pier as a basepoint for measurement of the breadth of the territorial sea. U.S. Department of State, *Sovereignty of the Sea* (Geographic Bull. No. 3, April 1965), at 29. A copy of that diagram is reproduced as Figure 20 in the appendix to this petition.

Finally, there will be no inequity to the United States if California is permitted to count 16 piers and one causeway as part of its coastline. In *United States v. California, supra,* 381 U.S. at 177, this Court observed that:

> "... Arguments based on the inequity to the United States of allowing California to effect changes in the boundary between federal and state submerged lands by making future artificial changes in the coastline are met, as the Special Master pointed out, by the ability of the United States to protect itself through its power over navigable waters."

The United States still possesses this power to regulate artificial changes which would affect the federal-state boundary in offshore areas. 33 U.S.C. § 403 provides that it is unlawful to build or commence the building of a pier or other structure in any water of the United States outside established harbor lines "except on plans recommended by the Chief of Engineers and authorized by the Secretary of the Army."

### D. The Need for Appointment of a Special Master to Report on Disputed Questions of Fact

California submits that this petition raises questions of fact appropriate for reference to a Special Master. It is California's estimate that presentation of evidence on these factual issues should require approximately seven days of trial time.

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JOHN BRISCOE
Deputy Attorney General

*Attorneys for Petitioner.*

# APPENDIX

**Figure 1**
**CLOSING LINE OF PORT OF SAN PEDRO**
**(EASTERN END ONLY)**

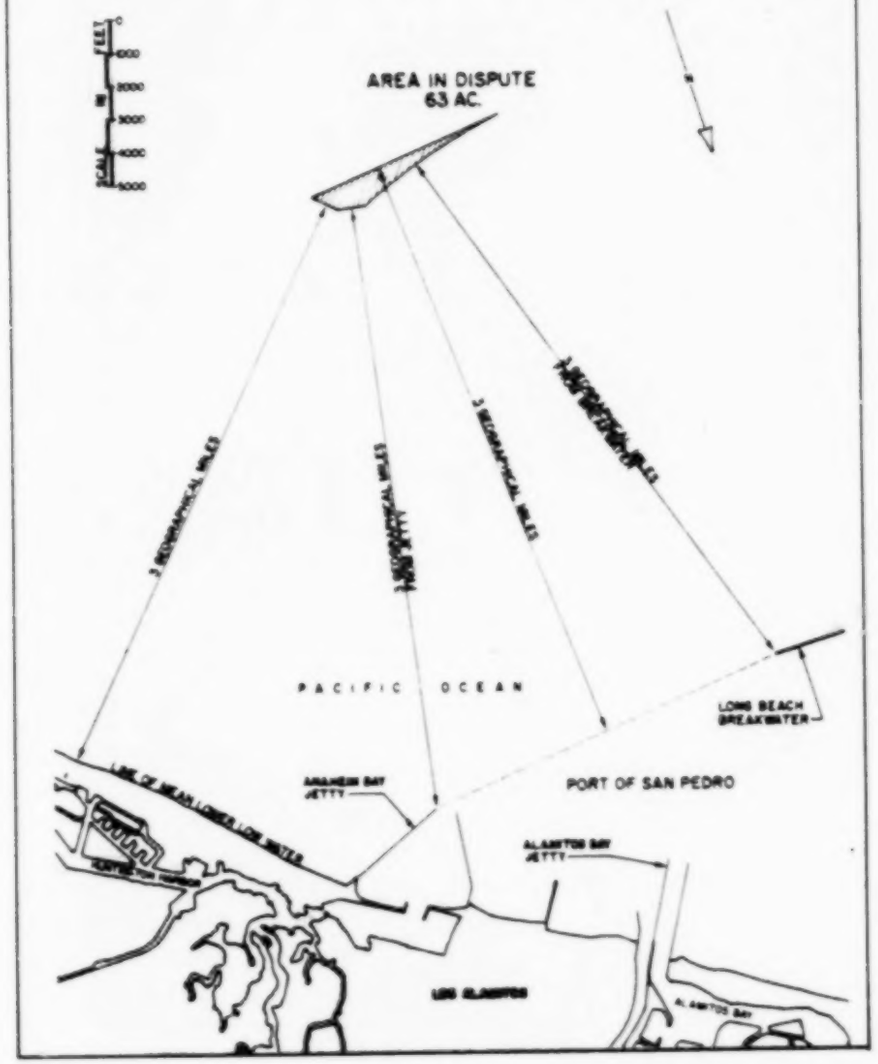


**Figure 1a**
**CLOSING LINE OF PORT OF SAN PEDRO**
**(ENTIRE PORT)**

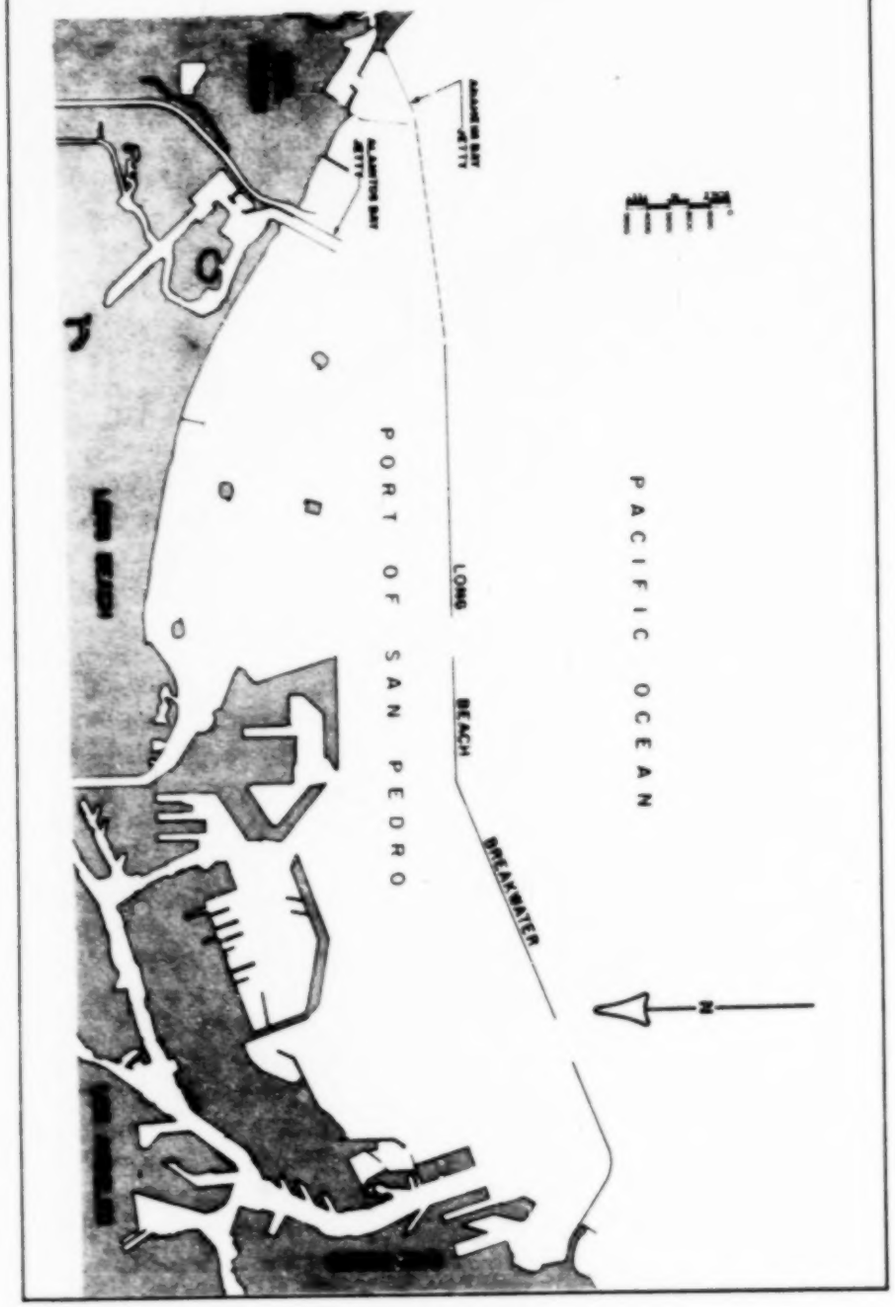


**Figure 2**
**CLOSING LINE OF SAN DIEGO BAY**

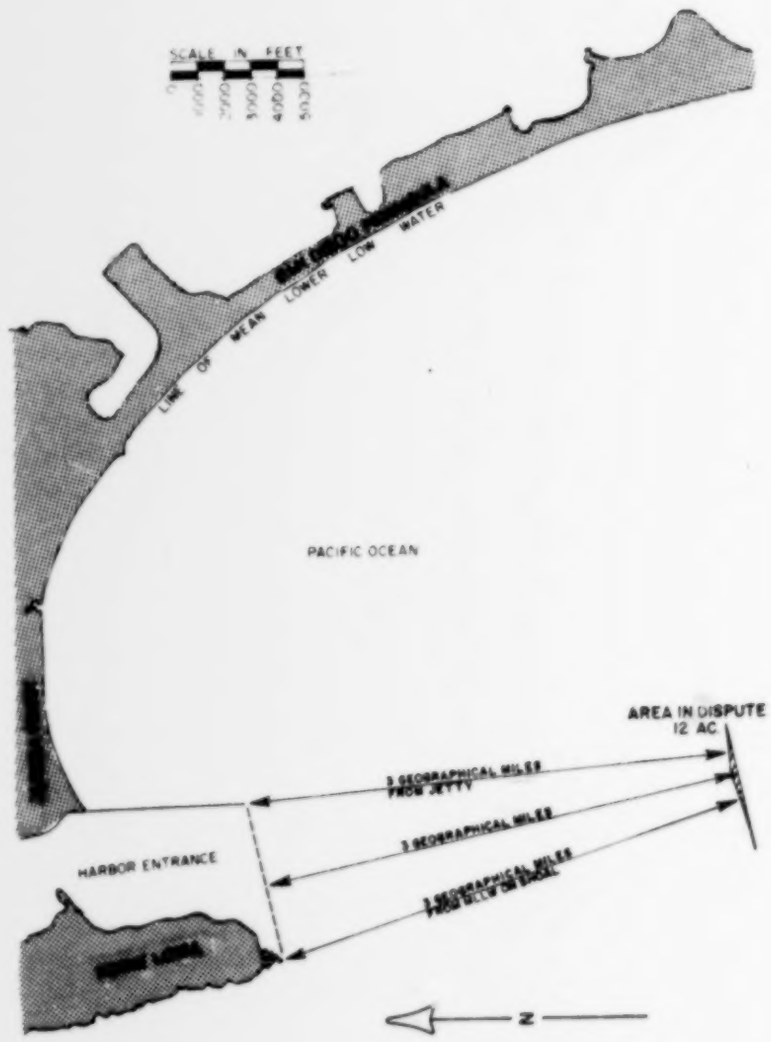


**Figure 3**
**THE SHARP BEACH PIER**

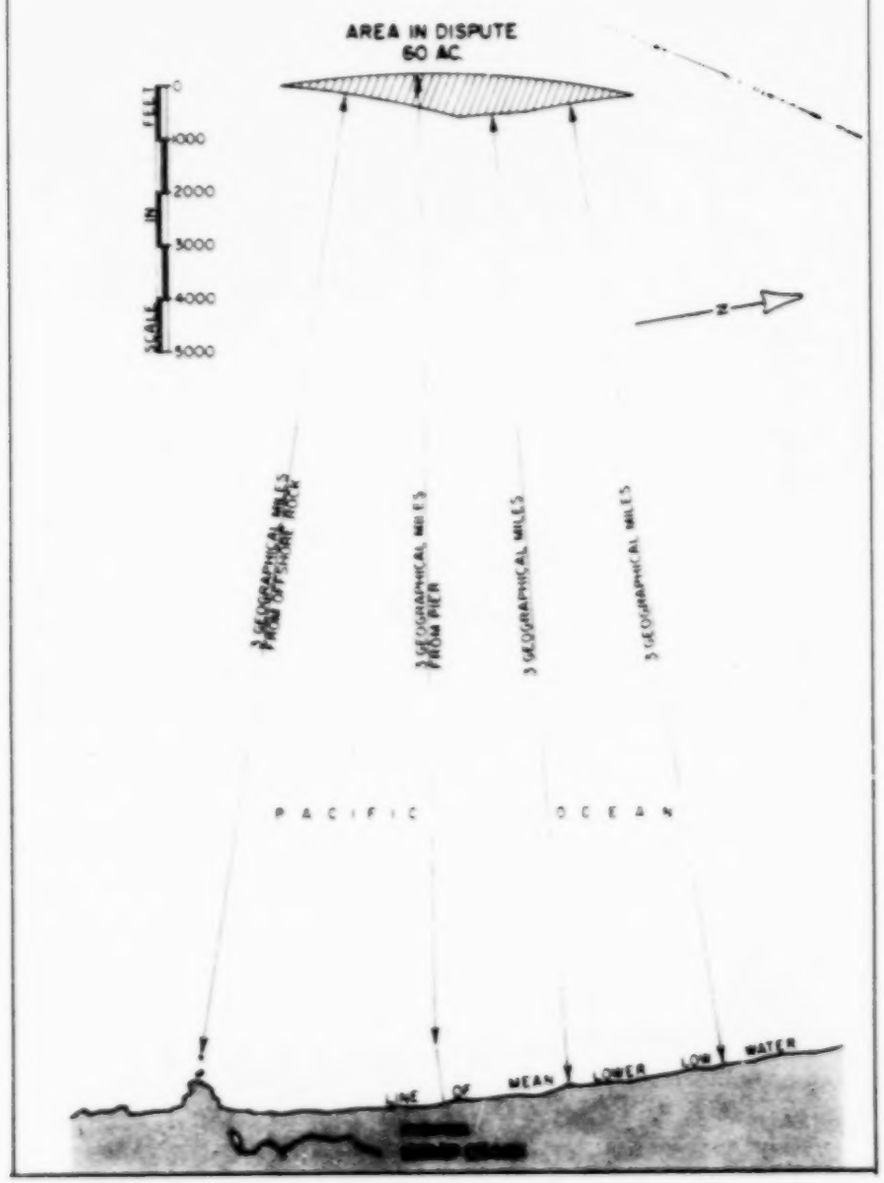


**Figure 4**
**MORRO STRAND PIER**

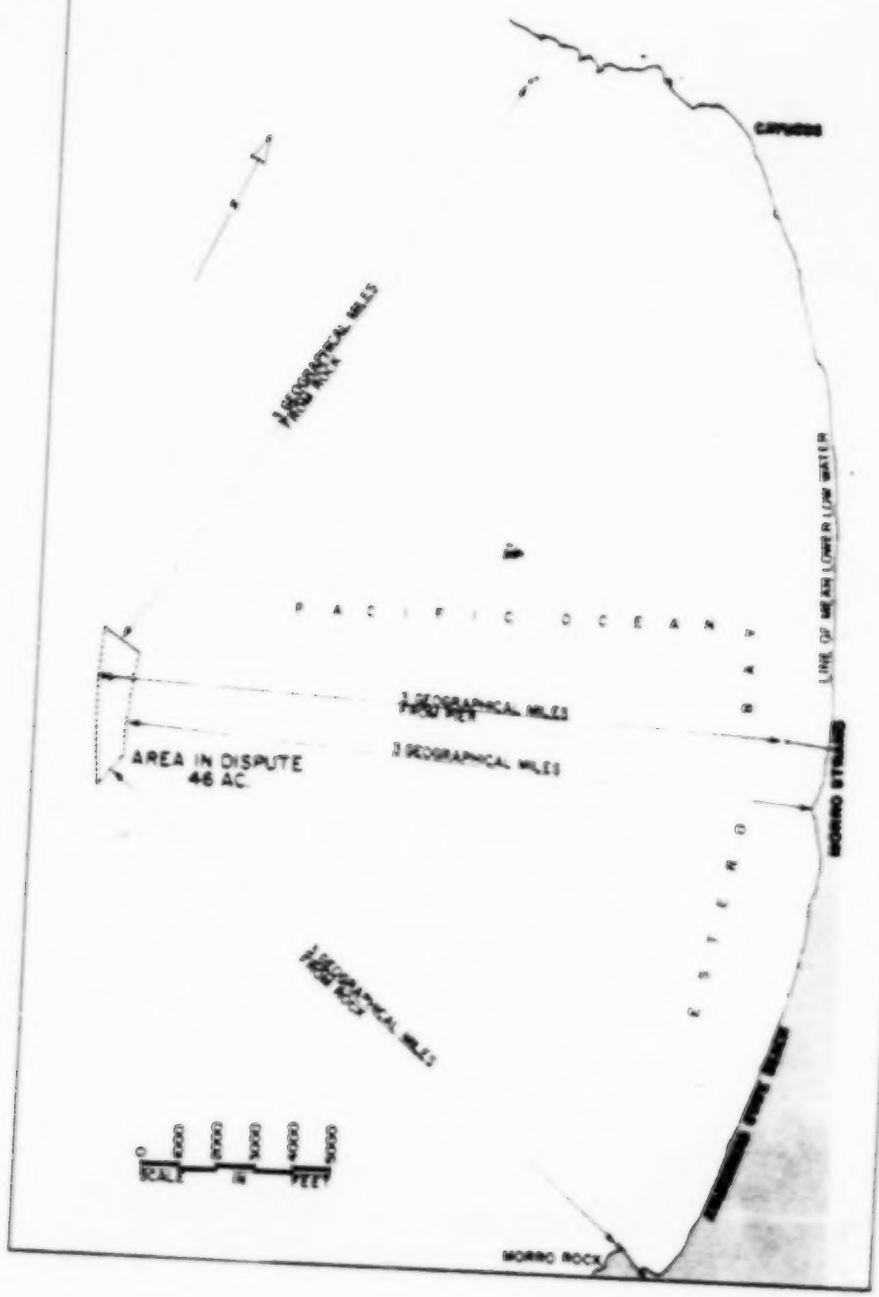


**Figure 5**
**THE PORT ORFORD PIER**

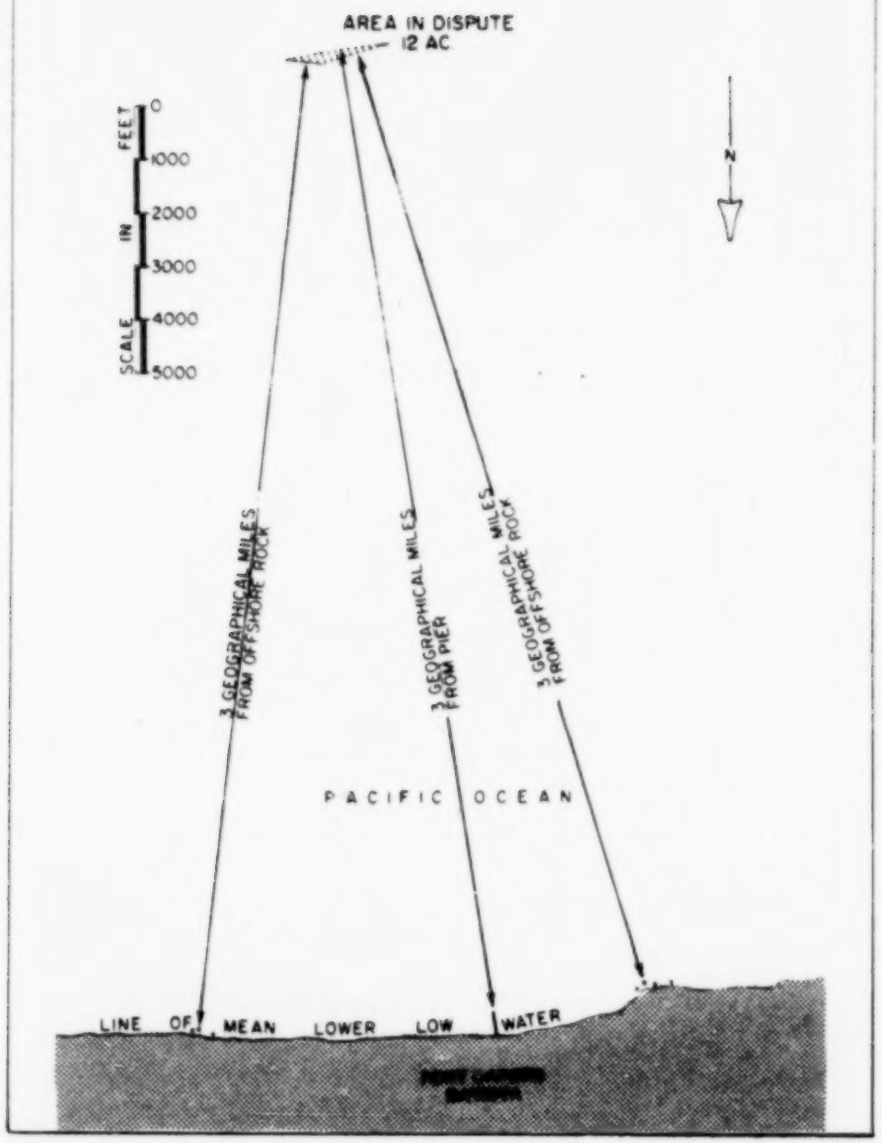


**Figure 6**
**THE ELLWOOD PIER**

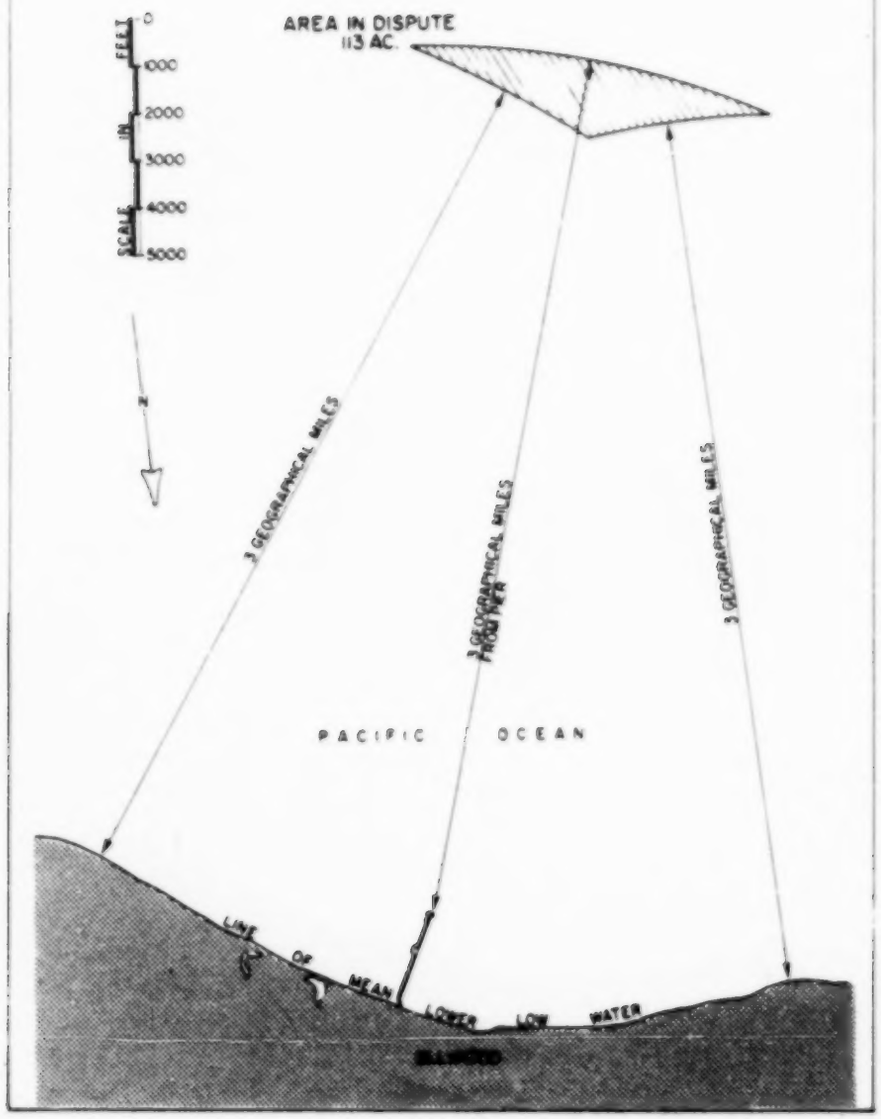


**Figure 7**
**THE SANTA BARBARA BILTMORE HOTEL PIER**

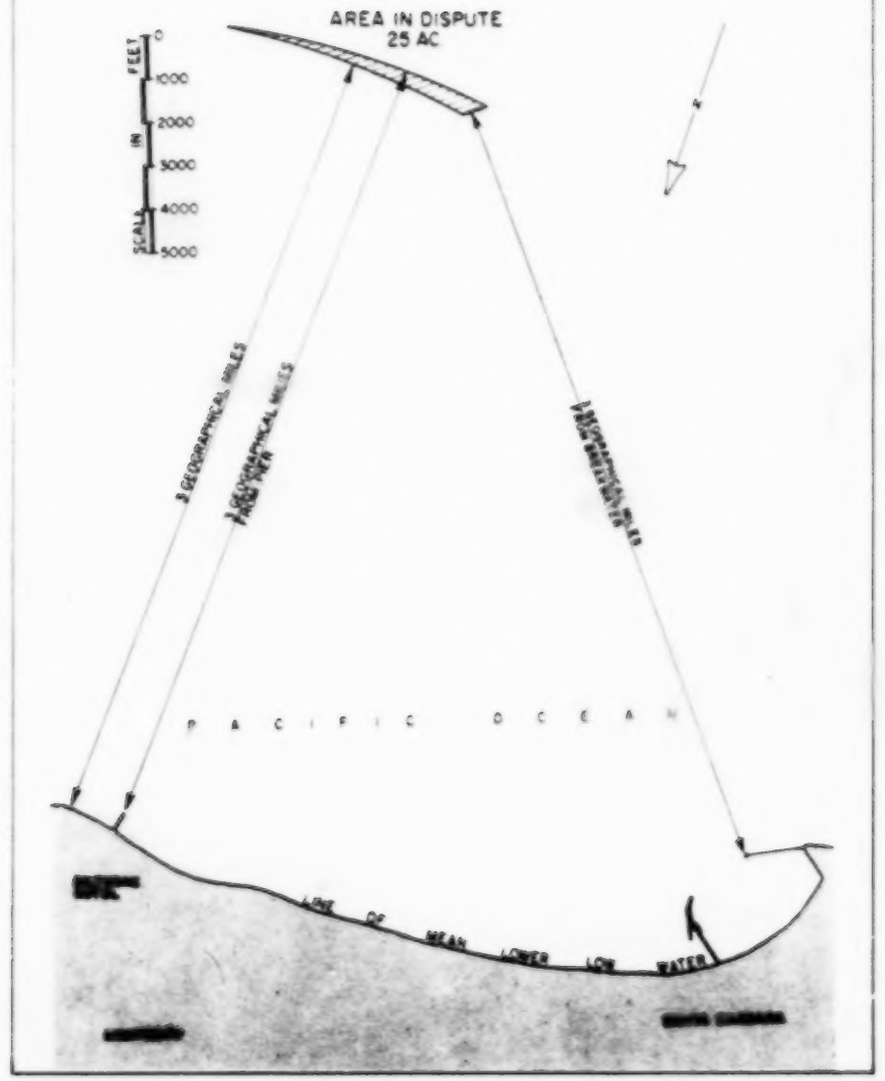


**Figure 8**
**THE CARPINTERIA PIER**

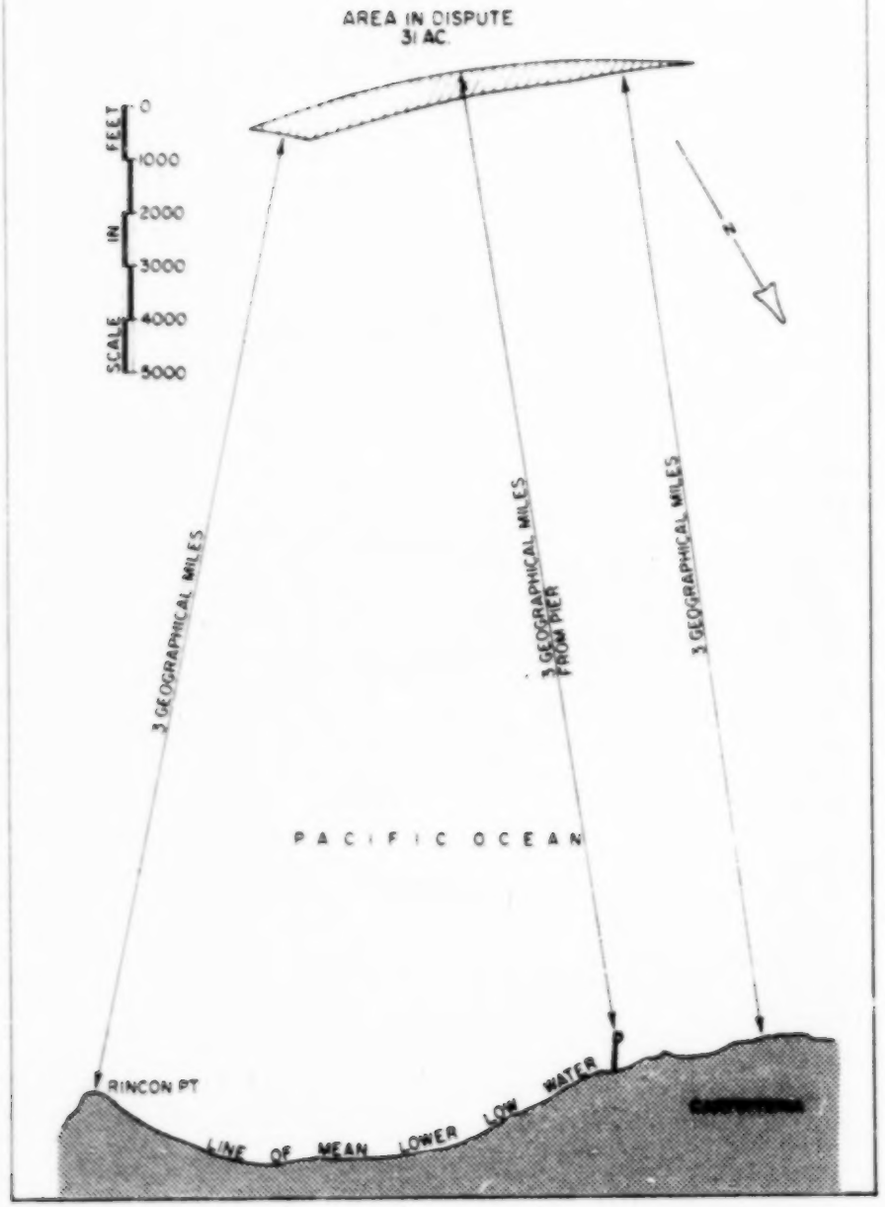


**Figure 9**
**THE PUNTA GORDA CAUSEWAY**
**AND RINCON ISLAND**

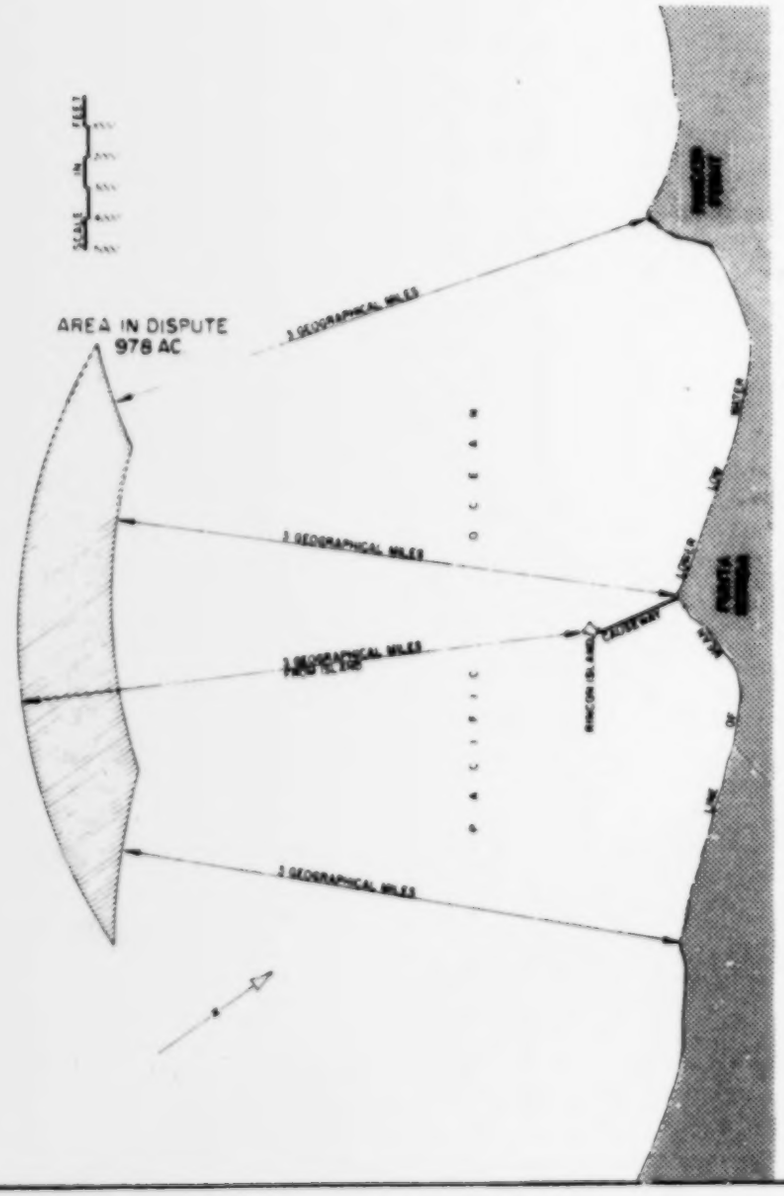


**Figure 10**
**THE VENICE PIER**

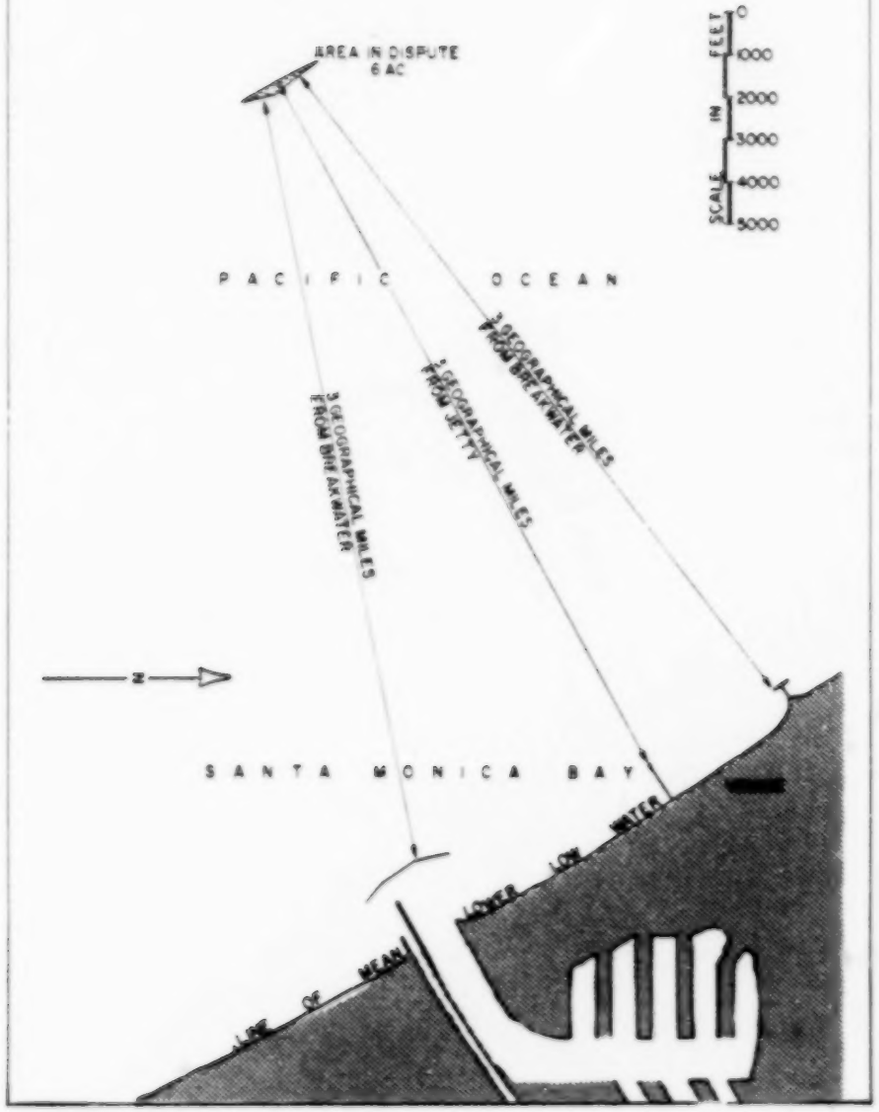


**Figure 11**
**THE EL SEGUNDO PIER**

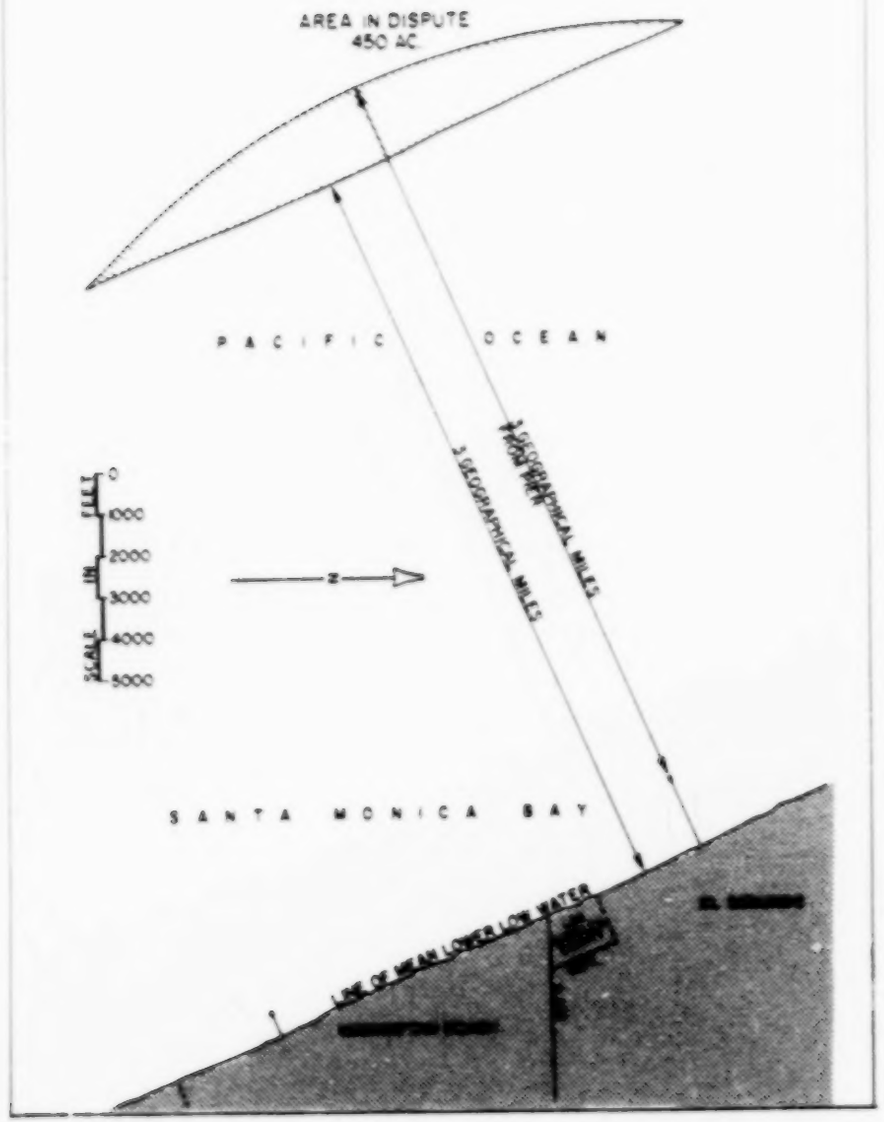


**Figure 12**
**MANHATTAN BEACH PIER**

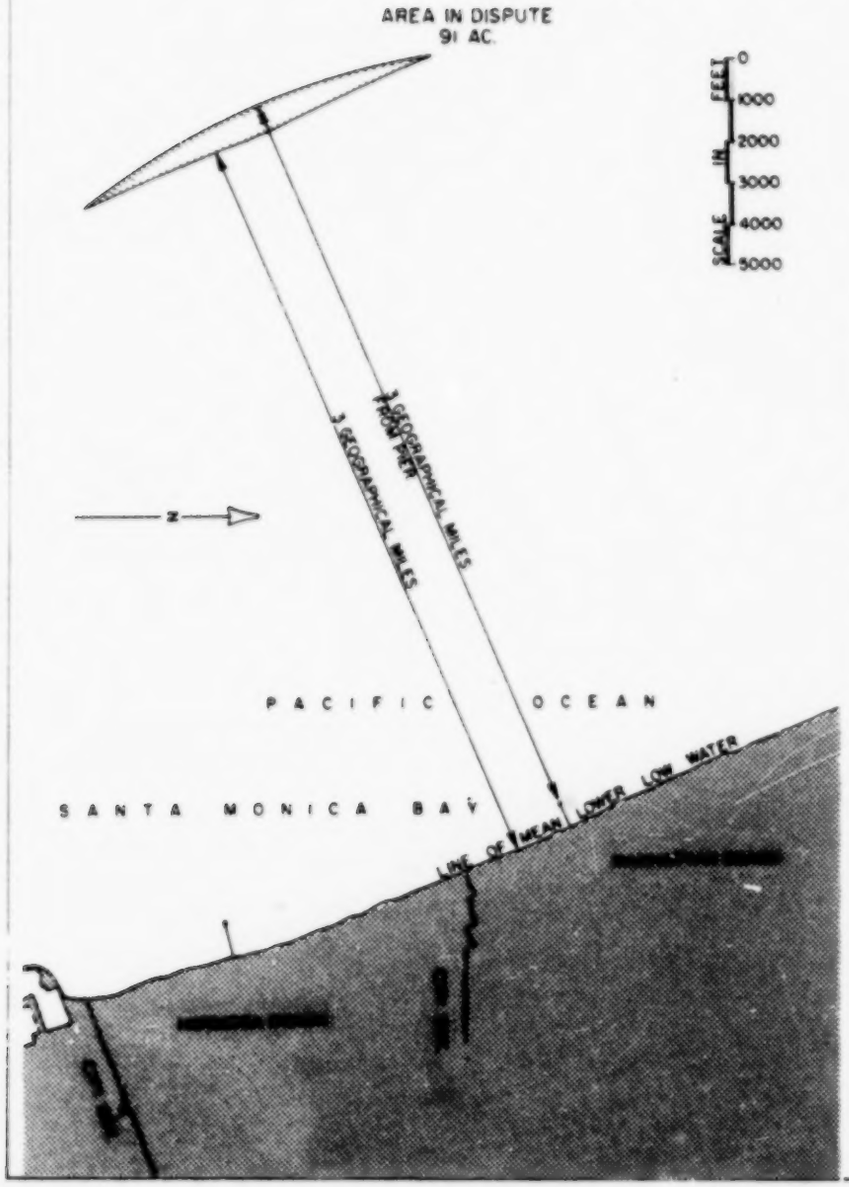


**Figure 13**
**THE HERMOSA BEACH PIER**

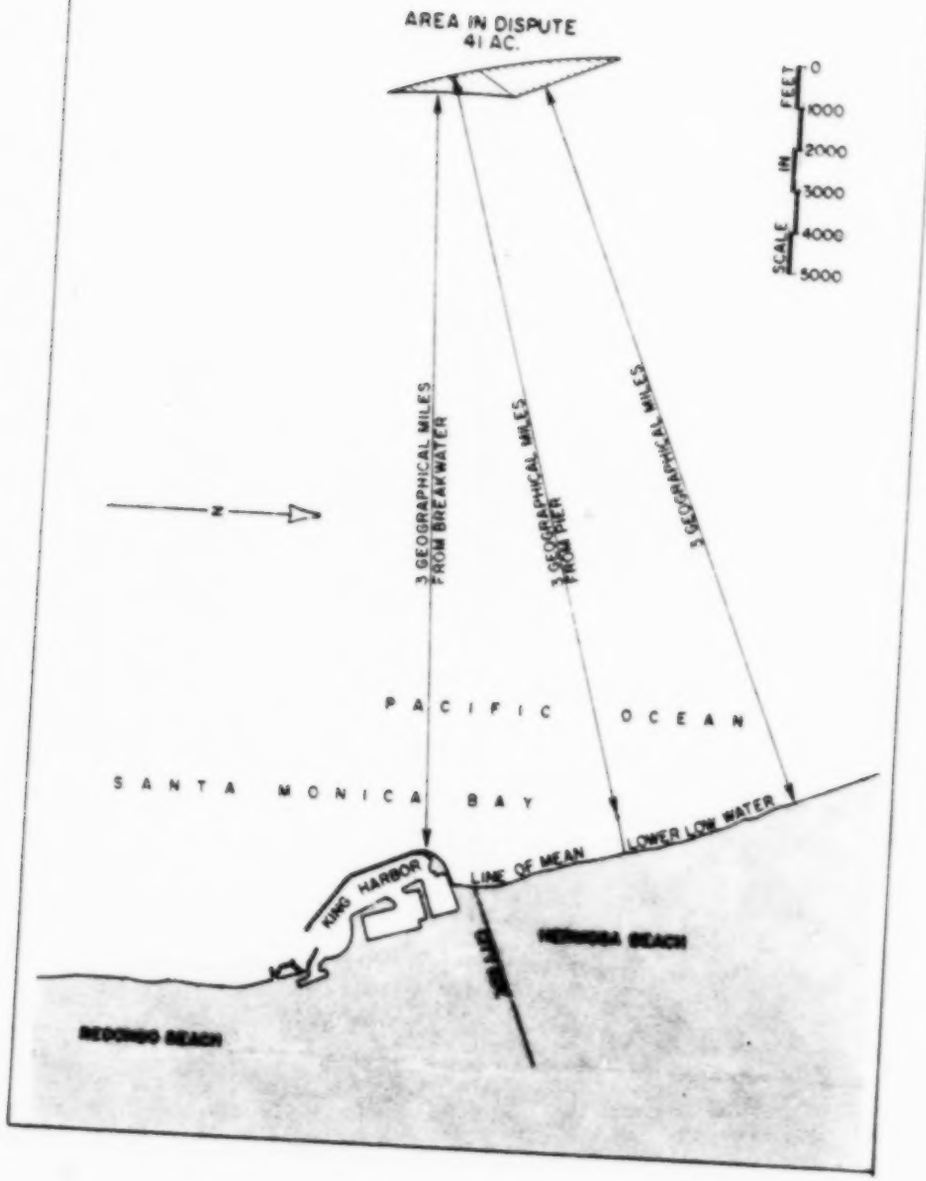


**Figure 14**
**THE HUNTINGTON BEACH PIER**

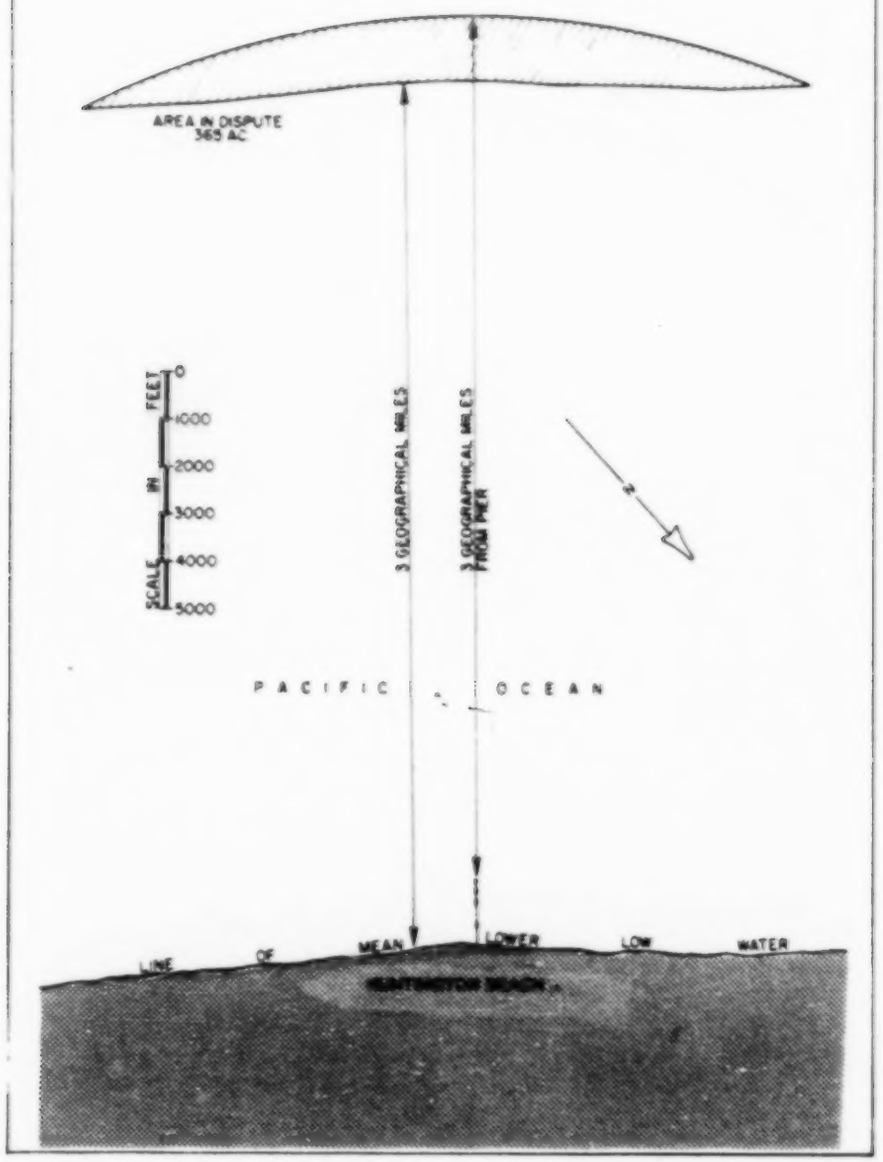


**Figure 15**
**THE NEWPORT BEACH PIER**

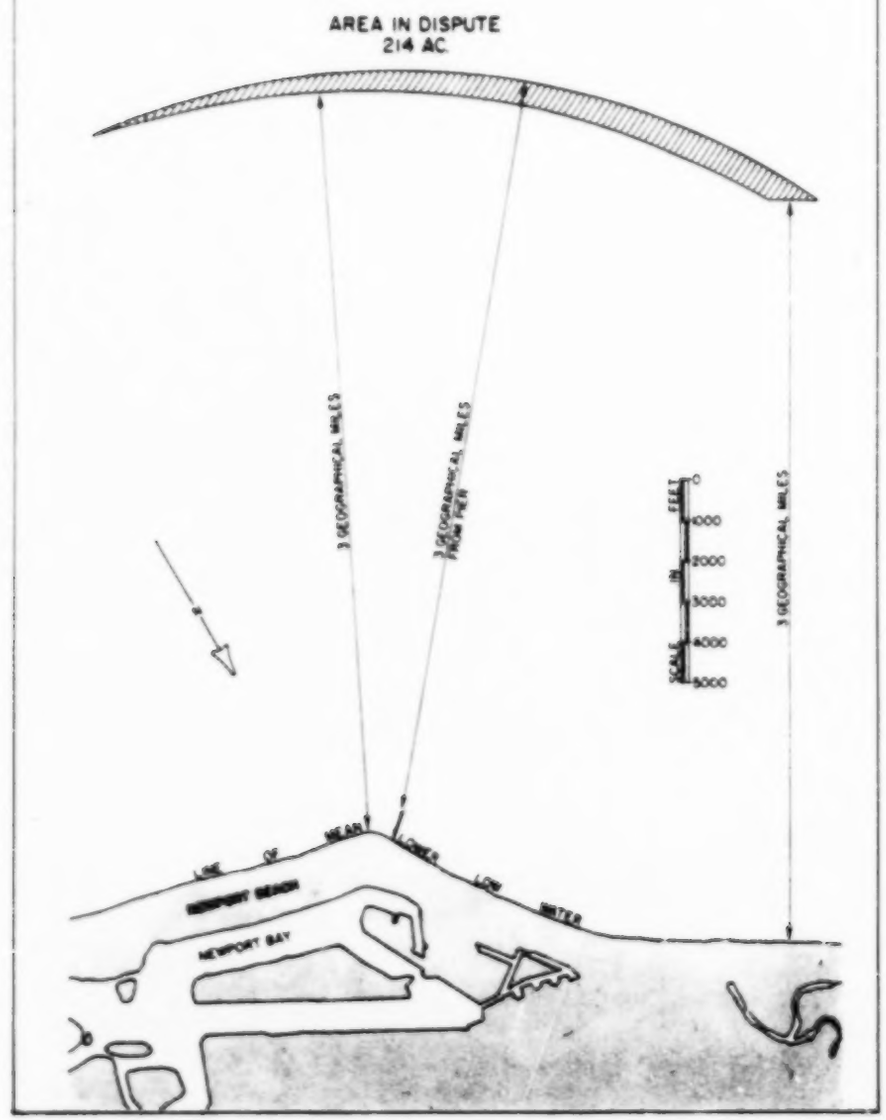


**Figure 16**
**THE BALBOA BEACH PIER**

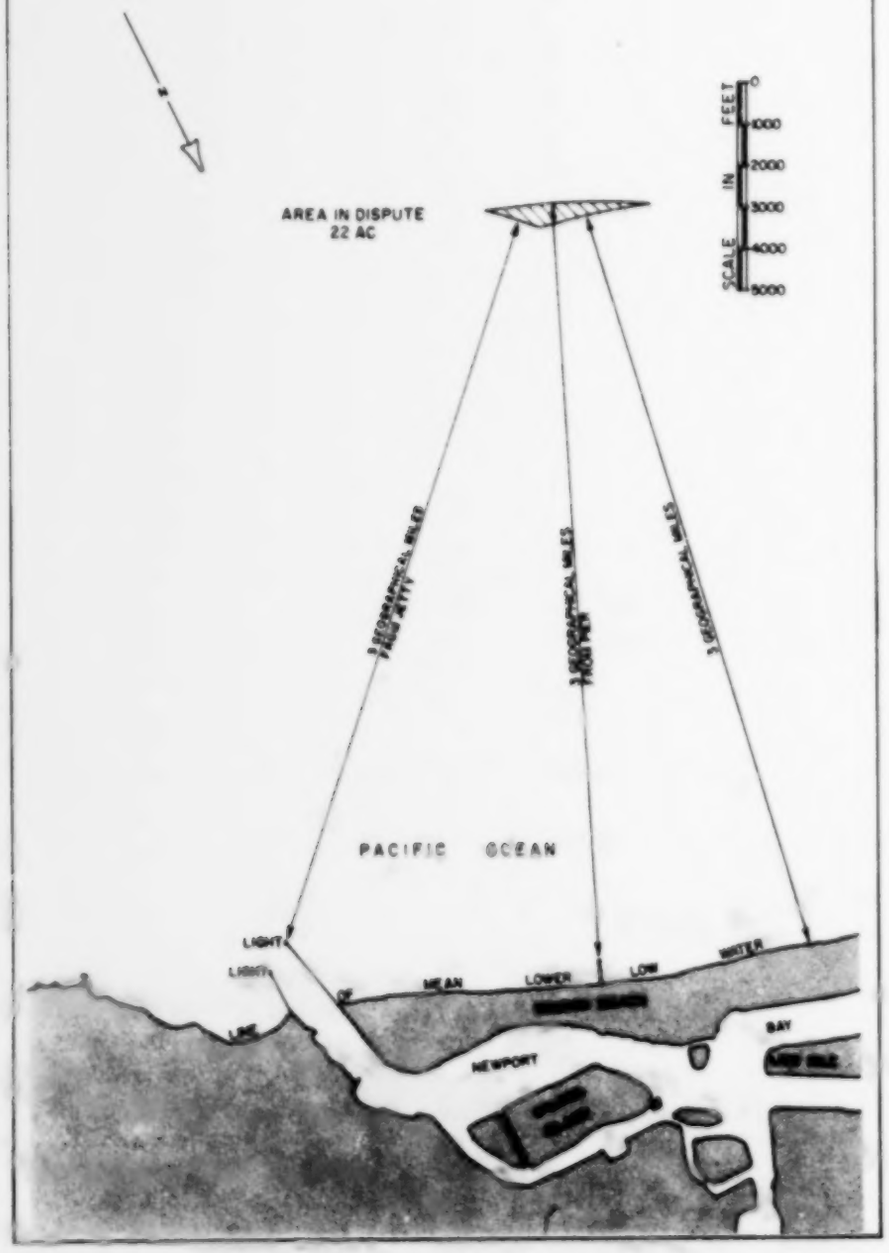


**Figure 17**
**THE OCEANSIDE PIER**

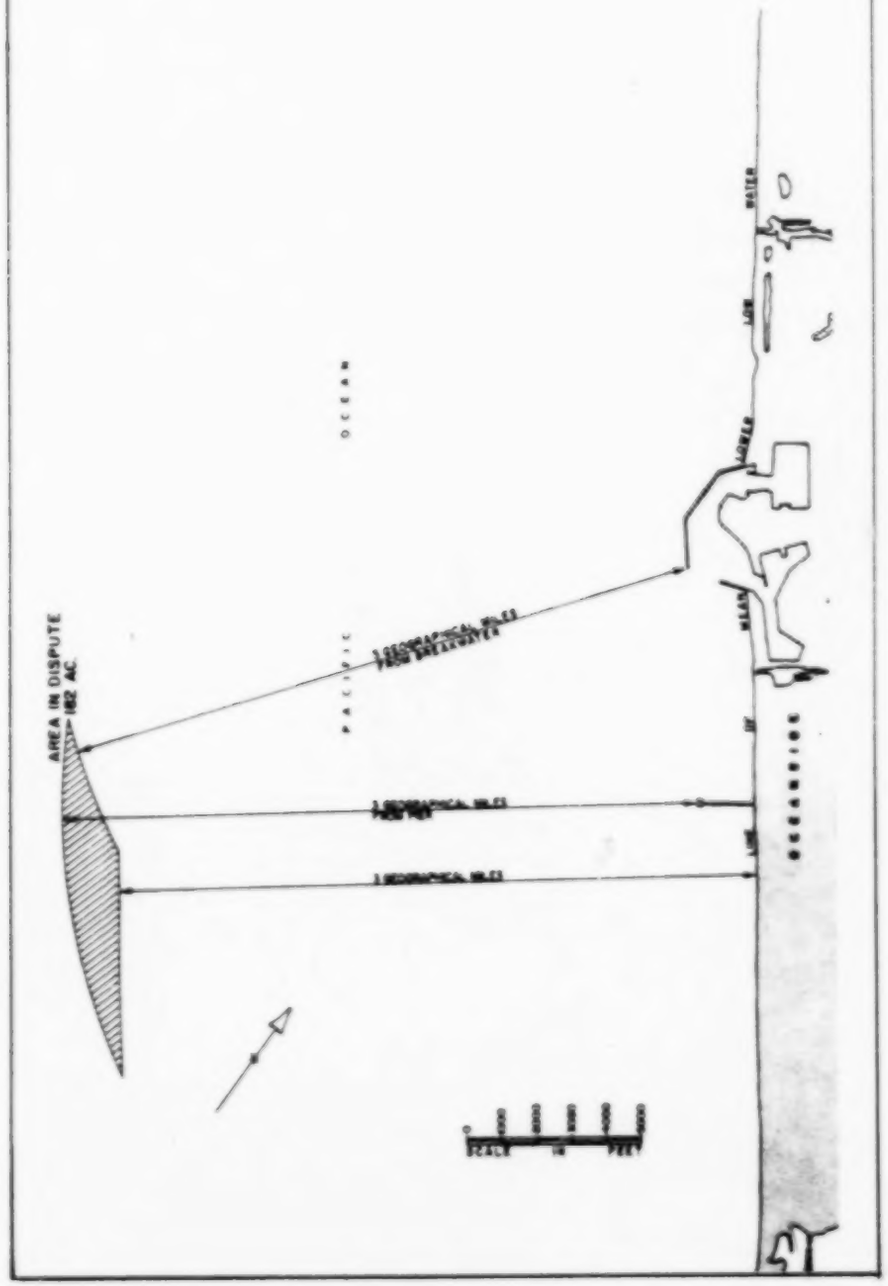


**Figure 18**
**THE OCEAN BEACH PIER**

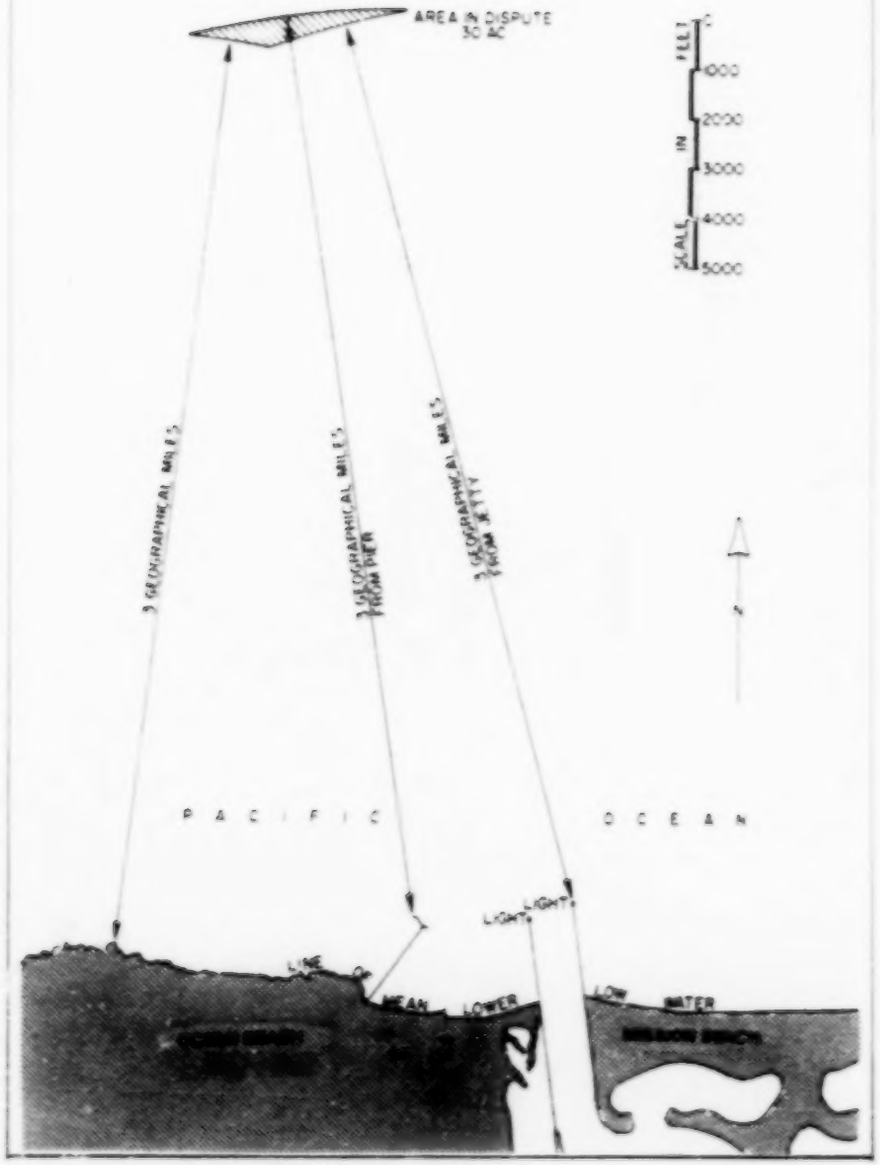
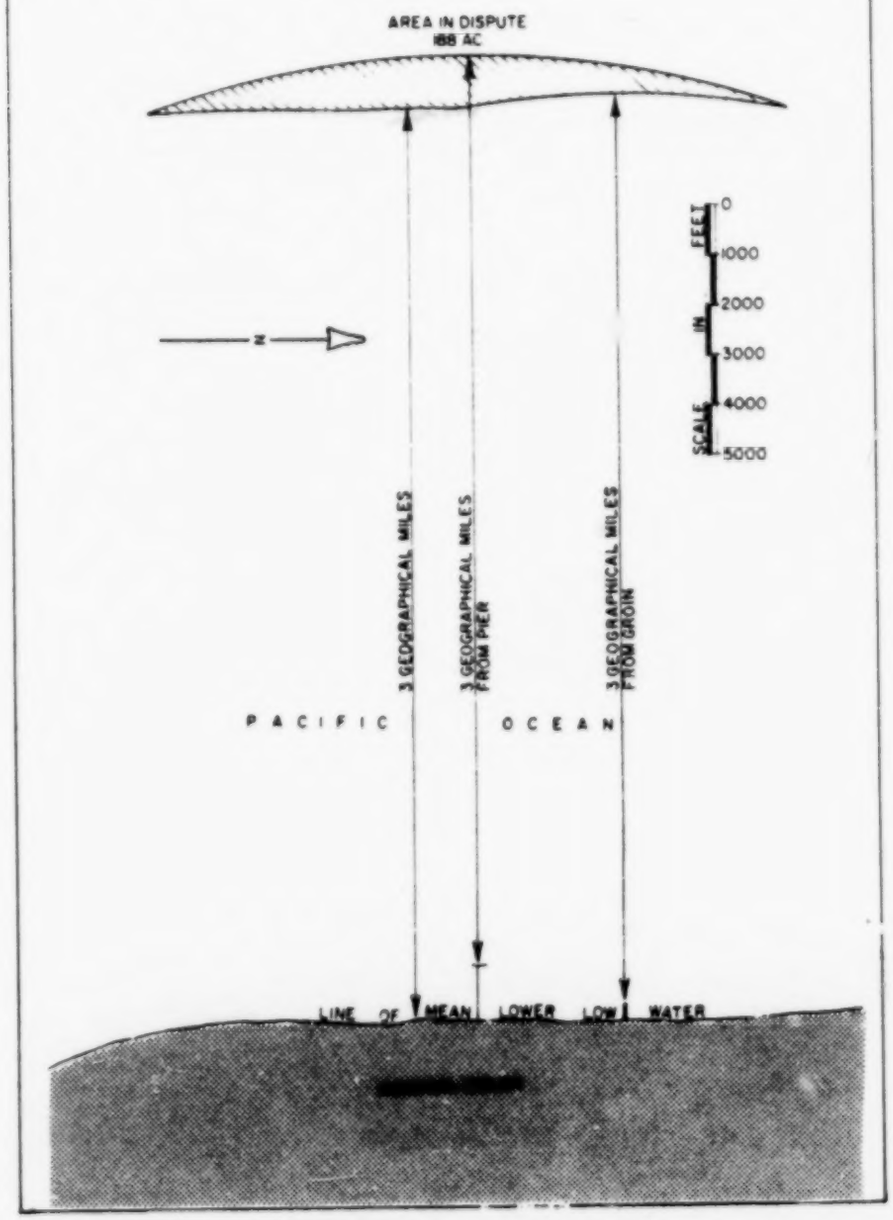


**Figure 19**
**THE IMPERIAL BEACH PIER**



[Pier shown as part of the coast line for purposes of delimiting the territorial sea.]

## Figure 20
## STATE DEPARTMENT DIAGRAM